

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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FEB - 6 2003

In the Matter of

Amendment of Section 73.202(b)  
Table of Allotments  
FM Broadcast Stations  
(Glenville, North Carolina)

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)

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE (IF THE SECRETARY

MB Docket No. 02-352  
RM - 10602

To: Assistant Chief,  
Audio Division  
Media Bureau

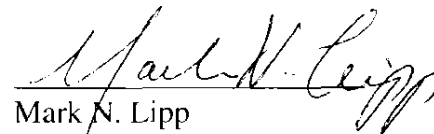
**SUPPLEMENT**

On February 5, 2003, The Stair Company, ("Stair"), by its counsel, submitted a "Reply" accompanied with a "Motion for Leave to File Reply" in this proceeding. At page 3, paragraph 6, Stair indicated that it attached a copy of a separately filed pleading entitled "Opposition to Informal Objection." Attachment 1. That pleading was submitted with an unsigned version. Thus, attached to this Supplement is a stamped copy of that pleading which includes the signatures.

Respectfully submitted,

THE STAIR COMPANY

By:



Mark N. Lipp  
J. Thomas Nolan  
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600 14th Street, NW, Suite 800  
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(202) 783-8400

Its Counsel

February 6, 2003

# **ATTACHMENT 1**

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

**STAMP & RETURN**

FEB - 5 2003

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re:

Application of The Stair Company for Minor	}	File No. BPH-20021210AAP
Changes to the Licensed Facilities of	}	
WCTU(FM), Tazewell, Tennessee	}	
(Fat. ID No. 72070)	}	
	}	

To: Chief, Audio Division  
Media Bureau

**OPPOSITION TO INFORMAL OBJECTION**

The Stair Company ("Stair"), licensee of Station WCTU(FM), Channel 290A, Tazewell, Tennessee, by its counsel, hereby opposes the Informal Objection of Georgia-Carolina Radiocasting Company, LLC ("GCRC") to the above-captioned application (the "WCTU Application"). GCRC raises three objections against the WCTU Application. GCRC claims that (1) the WCTU Application is barred by the Commission's policy against alternative counterproposals; (2) it was not filed for bona-fide purposes; and (3) it fails to meet the Commission's community coverage requirements. Each of these objections is addressed in turn below

**I. The WCTU Application Is Not Barred by any Policy Against Alternative Counterproposals.**

1. GCRC requests that the Commission cease processing the WCTU Application because of a pending rule making proceeding, MB Docket No. 02-352 (Glenville, North Carolina). After filing the WCTU Application, Stair filed a timely counterproposal in that proceeding, seeking to upgrade and relocate WCTU from Tazewell to Weaverville, North Carolina on Channel 290C2

2. GCRC argues that the processing of the WCTU Application should be suspended pursuant to the Commission's policy not to accept alternative proposals in rule making proceedings. GCRC made the same argument in its reply comments in the *Glenville, North Carolina* rule making proceeding. However, as **Stair** pointed out in its reply filed in that proceeding, the Commission's policy is not applicable here. A copy of Stair's reply in that proceeding is attached hereto, and is incorporated herein by reference. See Attachment 1. In summary, as set forth therein, the Commission permits a licensee to pursue changes to its facilities while it has a rule making proposal pending involving the same station, and there are sound reasons for maintaining that policy. There is no statute, rule, or policy that requires suspension of processing of the WCTU Application. That application is separate from and not contingent with or alternative to the rule making filing.<sup>1</sup> Indeed, one possible outcome is that the application is granted first, and the rule making proposal is granted at a later date. In that case, Stair intends to construct the facilities authorized pursuant to the initial construction permit and operate the station during the interim period. Accordingly, GCRC's request for suspension should be denied.

## **II. The WCTU Application Was Filed For Bona-Fide Reasons, and Not Solely for the Purpose of Precluding Competing Counterproposals.**

3. In its reply comments in the *Glenville, North Carolina* rule making proceeding, GCRC asserts that the WCTU Application "was filed with the sole purpose of blocking a wide range of other possible proposals" in that proceeding. GCRC Reply Comments at 4. That

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<sup>1</sup> The policy against alternative rule making proposals referred to by GCRC in its informal objection was set forth in *Winslow, Camp Verde, Mayer and Sun City West, Arizona*, 16 FCC Rcd 9551 (2001). As discussed in the attached reply, that policy is not applicable to the WCTU Application, which is not in conflict with the *Glenville, North Carolina* proposal or any other pending proceeding, and is not alternative to or contingent upon action in the rule making proceeding. See Attachment 2 (channel study demonstrating clear spacing to all pending proposals).

assertion is incorrect. The attached affidavit of Frank McCoy describes the difficulties Stair is currently encountering at its present transmitter site. *See* Attachment 3. Recently, the Commission ordered WCTU to change frequencies from Channel 231A to 290A. *Colonial Heights, Tennessee*, 15 FCC Rcd 195 (2000). This required the installation of a much larger antenna than had previously been mounted on the tower. The new antenna severely taxes the existing tower structure, which is of lightweight construction and is in deteriorating condition.

4. The current site is not suitable for long-term capital improvements, for several reasons. Repairs to the existing structure are difficult or impossible given its condition. The tower is on unstable ground in a residential area, making new construction unwise and doubtful of local zoning approval. Finally, after changing frequencies, WCTU experienced interference from short-spaced Station WTBK, Channel 289C3, Manchester, Kentucky, and that interference can be expected to continue until a new transmitter site is found.

5. The Affidavit details the licensee's actions in preparing for and filing the WCTU Application. At approximately the same time, the counterproposal deadline in the *Glenville, North Carolina* proceeding necessitated finalizing WCTU's long-term plans for a change in community of license and facilities upgrade to Channel 290C2. Stair reiterates that should the WCTU Application be granted before its proposal for a change in community of license can be effectuated, it will construct the authorized facilities.

### **III. The WCTU Application Provides Substantial Coverage of the Community of License.**

6. Although the WCTU Application places a 70 dBu contour over less than 80% of the area of Tazewell, Tennessee, the contour covers 94% of the population of Tazewell. This satisfies the Commission's requirement of "substantial coverage" of the community of license. *See Certain Minor Changes in Broadcast Facilities*, 12 FCC Rcd 12371, 12380 (1997)

(minimum community coverage requirement is "at least 80% of the area **or** population within the legal boundaries *of* the community of license"). *See also Las Vegas, Nevada*, 62 FCC 2d 586 (1977) (granting application with less than full coverage when that portion of the community excluded from 70 dBu contour was relatively unpopulated). The application will be amended to clarify that the amount of community population covered by the 70 dBu signal is the standard under which substantial compliance with the principal community coverage rule is demonstrated.

#### **IV. CONCLUSION**

WHEREFORE, for the foregoing reasons, the Commission should deny the informal objection of GCRC to the above-captioned application.

Respectfully submitted,

**THE STAIR COMPANY**

By: 

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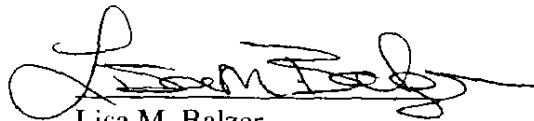
February 5, 2003

**CERTIFICATE OF SERVICE**

I, Lisa M. Balzer, a secretary in the law firm of Shook, Hardy and Bacon, do hereby certify that I have on this 5th day of February, 2003, caused to be mailed by first class mail, postage prepaid, copies of the foregoing **“Opposition to Informal Objection”** to the following:

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(Counsel to Georgia-Carolina Radiocasting Company, LLC)




Lisa M. Balzer

**CERTIFICATE OF SERVICE**

I, Lisa M. Balzer, a secretary in the law firm of Shook, Hardy and Bacon, do hereby certify that I have on this 6th day of February, 2003, caused to be mailed by first class mail, postage prepaid, copies of the foregoing "**Supplement**" to the following:

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Lisa M. Balzer